ALTS
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

July 23, 2001

VIA ELECTRONIC FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers; CC Docket No. 96-262

Dear Ms. Salas:

Attached are comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Access Charge Reform	)	CC Docket No. 96-262
Reform of Access Charges Imposed by Competitive Local Exchange Carriers	)	

COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services ("ALTS") hereby files its comments in the above-referenced proceeding in response to the petitions for reconsideration and clarification of the Commission's *Order* on competitive local exchange carriers ("CLEC") access charges.[1] Those petitions seek review of (1) the "new market" rule, which requires new entrant CLECs to immediately detariff access rates above those of the competing incumbent local exchange carrier ("ILEC"), (2) the method of calculating the benchmark rate in an area with multiple ILECs, and (3) application of the rural exemption only to carriers solely providing service in rural areas. For the reasons discussed below, ALTS urges the Commission to eliminate or modify its "new market" rule, clarify that the benchmark rate may be calculated using an average of the competing ILEC rates, and reconsider its restriction on which carriers may take advantage of the rural exemption. Qwest also raises two new issues under the guise of

[1] *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, FCC 01-146, CC Docket No. 96-262 (rel. April 27, 2001) ("*Order*").

seeking clarification of the *Order*. Although ALTS submits that it is improper to raise these issues now during reconsideration when they were not raised and considered earlier, ALTS rebuts those issues in these comments.

I. The New Market Rule Is Unreasonable and Discriminatory

Several petitioners seek reconsideration of the Commission's "new market" rule requiring a CLEC to immediately detariff rates above those of the competing ILEC in markets the CLEC enters after the effective date of the *Order*.[2] In all markets where the CLEC was providing service prior to that date, it may detariff its rates according to the three-year transition plan established in the *Order*. However, the Commission found that CLECs would not be able to take advantage of the transition plan in metropolitan statistical areas ("MSAs") where they were not providing service prior to that date.[3] ALTS agrees with these petitioners that the Commission should rescind the "new market" rule altogether because it is unfair and discriminatory. At a minimum, however, the Commission should rescind the rule for carriers that have begun investing or implementing their business plan in a market[4] or rescind it for 12 months as proposed by TWTC[5] to allow carriers that have begun investing or implementing their business plan in a market to do so under the transition plan.

ALTS agrees that the Commission did not provide adequate notice that it was considering adopting a different rule for new markets than the transition plan it

[2] Time Warner Telecom Petition for Reconsideration ("TWTC Petition"); Petition for Reconsideration of Focal Communications and US LEC Corp. ("Focal and US LEC Petition"); TDS Metrocom Petition for Reconsideration at 18.
[3] *Order* at 58.
[4] Focal and US LEC Petition at 2.
[5] TWTC Petition at 5.

established for other markets.[6] ALTS and its members were very involved in ongoing discussions with the Commission during the time it was considering the rules adopted in the *Order*. At no time during these meetings or in its written notices or requests for comments did the Commission discuss, or even mention, that it was considering establishing a separate rule for new markets. Because parties were given no notice of this rule, they had no opportunity to comment as required by the Administrative Procedure Act.

The Commission's criteria for determining when a carrier is entitled to charge rates based on the transition plan in a particular market is unreasonable and arbitrary. Although a carrier planning to enter a market may not yet have begun providing service to customers in that market by the date the Commission adopted the *Order*, that carrier may have spent many hours negotiating agreements and developing business plans and marketing strategies, not to mention the tens or hundreds of thousands of dollars invested to build networks, buy and collocate equipment, and otherwise prepare to provide service in that market. As noted by the petitioners,[7] this process may take months, even years to complete; therefore, a carrier expecting to enter a market in the near future likely began planning that entry and investing time and money to facilitate that entry at least six months to a year ago. For the same reason, carriers that recently began such investment in new markets during the past couple of months may not actually begin serving customers in that market until mid-to-late 2002.

[6] Focal and US LEC Petition at 2.
[7] TWTC Petition at 7.

All carriers must consider the cost effectiveness of entering a market, and the Commission's new rules regarding CLEC access charges will undoubtedly alter the analyses of many companies, thus altering their future business plans. As noted by the petitioners,[8] many CLECs may have begun seeking to establish interconnection agreements with ILECs or otherwise to invest in a particular market long before the Commission adopted the *Order*. However, merely because they did not begin providing service to customers in those markets before June 20, 2001, they will be unable to take advantage of the Commission's transition plan. In the *Order*, the Commission was "reluctant to flash-cut CLEC access rates to the level of the competing ILEC [and stated that] a more gradual transition is appropriate so that the affected carriers will have an opportunity to adjust their business models."[9] ALTS submits that carriers seeking to enter new markets need the same opportunity to adjust their business models.

The Commission recognized that "CLECs, have, in the past, set their rates without having to conform to the regulatory standards imposed on the ILECs, and this Commission has twice ruled, in essence, that a CLEC's rate is not per se unreasonable merely because it exceeds the ILEC rate."[10] Thus, carriers considering entry into a new market could have justifiably planned to charge rates higher than those of the ILEC but still reasonable by the Commission's standards. The Commission considered the negative impact of flash-cutting rates when it developed the interim transition plan; however, it appears to have abandoned that concern when adopting the "new market"

[8] Focal and US LEC Petition at 8-9; TWTC Petition at 6-7.
[9] *Order* ¶ 37.
[10] *Id.*

rule, regardless of the fact that new entrant carriers had the same expectations when developing their future business plans.

While ALTS understands the Commission's desire to curb arbitrage opportunities, it is unfair to provide carriers with so little forewarning that they stand to lose hundreds of thousands of dollars already invested because their business plan no longer makes sense in light of the *Order*. And ALTS does not concede that because those business plans are no longer cost-effective under the Commission's new rules that they were necessarily based on some form of arbitrage when they were originally formed. Even assuming carriers had some forewarning of a reduction in rates based on the existence of this proceeding, there was no forewarning that carriers would be subject to charging rates comparable to the ILEC rates immediately in markets they were planning to enter after adoption of the *Order*. ALTS submits that these carriers justifiably relied on a certain level of access charge revenues when developing their business plans, and they should be allowed to transition to the ILEC rate over the three year period just like the carriers already established in those markets.

The "new market" rule is discriminatory because it unreasonably treats new entrants differently from carriers already established in a market. It forbids certain carriers from recovering the same level of costs from interexchange carriers ("IXCs") as other carriers that entered the market at an earlier time. All carriers incur costs in providing services, but new entrants typically have higher start-up costs as they enter a market. The discrimination caused by the Commission's rule is further compounded when one considers that established carriers may have a larger customer base over which to spread their costs, while a new entrant typically has a smaller base through which to recover its costs. Carriers in new markets should have at least an equal opportunity to recover those costs in the same manner as the established carriers in those markets. Otherwise, the Commission's rule creates a barrier to entry and will thwart the spread of competition in many markets. Many carriers will be forced to abandon their entry plans, thereby denying consumers the benefits of competition in those markets.

Moreover, the Commission's rule is impossible to implement for many carriers because of the limitations of their billing systems. A group of CLECs seeking a stay of the Commission's new market rule recently filed affidavits explaining that their carrier access billing systems ("CABS") cannot set and bill access charges on a MSA-specific basis.[11] Many ALTS members utilize similar billing systems that do not allow for billing by MSA, but are designed to bill on a statewide basis. Therefore, these carriers are unable to implement the Commission's "new market" rule at this time. ALTS supports the Joint CLEC parties' request for a stay, especially as the Commission considers these petitions for reconsideration.

II. The Commission Should Clarify that CLECs may Calculate the Benchmark Rate as an Average of Competing ILEC Rates

TelePacific seeks clarification on the methodology to be used by CLECs in calculating a benchmark rate where a CLEC service area includes territory served by more than one ILEC.[12] As TelePacific notes, the Commission's rule could be interpreted to allow CLECs to (1) choose between the multiple ILEC access rates, (2) utilize an average of those ILEC rates, or (3) charge different benchmark rates within its service area based on the ILEC territory in which the end user resides. Like TelePacific, other

[11] Written Ex Parte Statement of Joint CLEC Parties, CC Docket No. 96-262 (filed May 25, 2001).
[12] U.S. TelePacific Petition for Clarification at 1 ("TelePacific Petition").

ALTS members serve markets that encompass territories served by multiple ILECs, and they are concerned that if they do not calculate access rates in these circumstances that are suitable to the IXCs, then further disputes and complaints will result. After so many years of uncertainty regarding access charges, CLECs cannot afford to be subjected to more illegal self-help actions where the IXCs refuse to pay CLECs for access services they receive.

ALTS urges the Commission not to require CLECs to calculate separate access rates based on the ILEC territory in which the end user resides. Like TelePacific, other ALTS members would be required to develop software and administrative systems to track traffic based on the ILEC territory in which calls originated and terminated.[13] Additionally, for the same reasons described above, many CLEC billing systems are unable to bill separate access rates within a state. Thus, even if CLECs could easily determine the appropriate rate for access services provided each end user, they would be unable to bill the IXCs with such granularity.

Forcing CLECs to incur additional costs to adapt their current systems would unnecessarily increase the complexity of the access charge system and unfairly burden CLECs vis a vis their ILEC competitors. Moreover, if CLECs were forced to undergo this process and incur additional administrative costs not incurred by the ILECs, they should be able to charge higher access rates than the competing ILEC to recover those costs. Furthermore, IXCs would likely need to develop tools to track the same information in order to verify the access bills they receive from CLECs. There is no

[13] *Id.* at 2.

reason for the Commission to adopt a methodology that would likely increase the costs to all parties involved.

ALTS supports TelePacific's request for the Commission to adopt a methodology whereby CLECs calculate their access rates based on an average of the ILEC rates operating in the CLEC's service area and agrees that this is the "most cost effective and efficient solution"[14] that will lead to the fewest disputes. While ALTS would support the Commission finding that CLECs could select an access rate from among those of the competing ILEC, the IXCs would likely oppose this methodology and the rates established therein. Thus, while such a system would be simple to administer, it would not necessarily be the most efficient solution if CLECs were then subject to nonpayment by the IXCs and/or continually forced to litigate regarding their rates.

ALTS supports use of a straight average rather than a weighted average of the competing ILEC rates. Although a straight average may not necessarily result in a rate that is directly proportional to the actual volume of traffic a CLEC originates and terminates in a each ILEC's territory, it is much simpler to administer than a weighted average methodology. In order to calculate a weighted average, each CLEC would have to obtain or calculate its volumes of traffic or ILEC volumes of traffic. Some of this information may be readily available, but there is no guarantee that all CLECs, especially smaller carriers, will have easy access to the necessary information and not be unduly burdened by the process. Moreover, the weighted average would become out of date almost as soon as it was calculated due to the changing nature of the market and varying

[14] *Id.*

monthly volumes of traffic. The Commission should not require carriers to undergo this process when a simpler straight average of ILEC rates would suffice.

III. The Commission Should Allow All Carriers Serving Rural Areas to Utilize the Rural Exemption in Those Areas

The Commission determined that its new rules could adversely affect CLECs that operate in rural areas and compete with price-cap ILECs that geographically average their rates across the state.[15] Because of the Commission's geographic averaging rules, non-rural ILECs could "use their low-cost, urban and suburban operations to subsidize their higher cost, rural operations, with the effect that their state-wide averaged access rates recover only a portion of the ILEC's regulated costs for providing access service to the rural portions of its study area."[16] Thus, the Commission adopted an exemption whereby CLECs competing with non-rural ILECs in rural areas may charge higher NECA-based rates so long as no portion of the CLEC's service area falls within certain non-rural areas defined by the Commission.[17]

Several petitioners seek reconsideration of the Commission's restriction of this exemption to carriers that only provide service in rural areas.[18] ALTS agrees with these petitioners that the rule should not be applied in an "all or nothing" fashion, but should apply to any CLEC operations where the CLEC competes in a rural area with a non-rural ILEC.[19] As the Commission found, the exemption does not provide an implicit subsidy to rural CLECs.[20] Rather, it "deprives IXCs of the implicit subsidy for access to certain

[15] *Order* ¶ 65.
[16] *Id.* ¶ 64.
[17] *Id.* ¶ 76.
[18] Petition for Reconsideration of Minnesota CLEC Consortium at 2-7 ("Minnesota CLEC Consortium Petition"); RICA Petition for Reconsideration at 10-11.
[19] Minnesota CLEC Consortium Petition at 2-5.
[20] *Order* ¶ 67.

rural customers that has arisen from the fact that non-rural ILECs average their access rates across their state-wide study areas."[21] Thus, because the exemption does not provide an implicit subsidy to CLECs, there is no reason to limit the exemption to CLECs that provide service only in rural areas. ALTS agrees that "disqualifying application of the rural benchmark to *all* CLEC end users on the basis of the location of a *single* CLEC end user is unreasonable, and would violate the primary rationale for the rural benchmark."[22] By placing such a restriction on the exemption, the Commission virtually eliminates any practical use of the exemption because most carriers that serve rural areas also serve some customers in non-rural areas.

Moreover, a balancing of the equities demands that the Commission allow any CLEC in rural areas to take advantage of the rural exemption in those areas. The Commission acknowledged that CLECs "experience much higher costs, particularly loop costs, when serving a rural area with a diffuse customer base than they do when serving a more concentrated urban or suburban area."[23] Thus, the Commission should allow those carriers to recover their costs from the IXCs rather than allow the IXCs to receive a subsidized rate when their long distance customers are served by a CLEC. The Commission may have valid policy reasons for providing such a subsidy to IXCs whose customers are served by ILECs that geographically average their rates, but there is no justifiable reason to require CLECs to provide that same subsidy to the IXCs in rural areas.

[21] *Id.*
[22] Minnesota CLEC Consortium Petition at 3.
[23] *Order* ¶ 65.

IV. The Commission Should Not Entertain Qwest's Supposed Requests for Clarification or Reconsideration

Under the guise of seeking clarification or, in the alternative, reconsideration of the *Order*, Qwest requests that the Commission now consider two new issues that have not been addressed before. To ALTS' knowledge, neither of these issues was raised previously in this proceeding, and Qwest makes no argument that these issues were raised or considered by the Commission in the *Order*. Qwest was well aware of the ongoing proceeding that led to the adoption of the *Order* and had every opportunity to raise these issues at that time. The Commission should not allow Qwest to undercut standard administrative procedure by entertaining these new issues here.

If the Commission does choose to address these issues, however, ALTS urges it to reject Qwest's proposals. Qwest requests the Commission to find that (1) a CLEC may tariff its access rate at the total ILEC rate only if the CLEC provides each of the services necessary to originate and terminate interexchange calls, and (2) an IXC may block calls to and from a CLEC if the CLEC does not provide sufficient information to allow the IXC to bill customers for their long distance service provided.[24] Neither of these issues merit the treatment proposed by Qwest.

Qwest argues that "the CLEC's tariffed rate should exclude the amounts paid for access services that are used for originating long distance calls from and terminating long distance calls to the CLEC and are not provided by the CLEC,"[25] claiming that "CLECs frequently provide only some of the services necessary to originate and terminate a long distance call, with the remaining services provided, and separately billed for, by an

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[24] Qwest Petition for Clarification, or in the Alternative, Reconsideration at 1 ("Qwest Petition").
[25] *Id.* at 2.

ILEC."[26] According to Qwest, an IXC may be required to pay for certain access services twice – once from the CLEC and again from the ILEC – because the IXC must pay the ILEC for access services, such as tandem switching, direct trunked transport and entrance facilities, as well as the CLEC's access rates.[27]

ALTS submits that Qwest's characterization of the services it receives and for which it pays is incorrect. Contrary to Qwest's assertion, CLECs typically can provide all the necessary services to originate or terminate toll traffic, and CLECs do not typically bill for services that they do not provide. Qwest's concern appears to stem from the fact that IXCs exchange traffic with most CLECs through the ILEC tandem, and thus those IXCs receive a service from the ILEC as well as from the CLEC when traffic is exchanged to and from CLEC end-user customers. In other words, Qwest and other IXCs are not billed "twice" for the same services, as Qwest suggests; they are validly billed for services they receive from both the CLEC and the ILEC. To avoid paying for ILEC services, an IXC could interconnect directly with a CLEC, thereby bypassing the ILEC network altogether. However, until such arrangements are established, IXCs should be required to pay for services they receive, regardless of whether the sum of charges from various carriers exceeds the ILEC composite rate, especially since the Commission specifically found that CLECs need not adjust their rate structure to be identical to that of the ILEC. The Commission should not grant Qwest's request to further reduce CLEC access charges merely because Qwest resists paying for all of the services it receives from other carriers.

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[26] *Id.* at 3.
[27] *Id.*

ALTS is sympathetic to Qwest's second concern regarding its inability to receive adequate billing information to identify the calling party and bill them for long distance charges. In fact, ALTS agrees with Qwest's premise that CLECs should provide, *at reasonable rates*, sufficient information for the IXC to identify the CLEC end-user customer and bill for its long distance charges.[28] However, the relief Qwest seeks to remedy its concern is inappropriate and excessive.

In the *Order*, the Commission found that "any solution to the current problem that allows IXCs unilaterally and without restriction to refuse to terminate calls or indiscriminately to pick and choose which traffic they will deliver would result in substantial confusion for consumers, would fundamentally disrupt the workings of the public switched telephone network, and would harm universal service."[29] The same rationale applies here, and there is no reason for the Commission to modify its finding that an IXC may not block traffic or refuse to provide service to an end user served by a CLEC whose rates are at or below the benchmark.[30] ALTS submits that the appropriate remedy for an IXC that is unable to purchase, at market or tariffed rates, adequate billing information from a CLEC would be to file a Section 208 complaint and seek redress from the Commission on a case-by-case basis.

ALTS believes the number of incidents where this occurs is quite small, thus the Commission should not address this issue in an overly broad manner by granting IXCs the ability to unilaterally block traffic when they feel they have not received "adequate" billing information. Such a finding would place a great deal of power in the hands of the

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[28] *Id.* at 5.
[29] *Order* ¶ 93.
[30] *Id.* ¶ 94.

IXCs, and could easily lead to abuse. As the Commission is well aware, the IXCs have repeatedly engaged in self-help actions where they believed CLEC access charges were inappropriate, regardless of the Commission's admonition that self-help was inappropriate. Based on this past abuse of the rules, the Commission should not trust the IXCs to fairly apply an exception to the rule that they cannot refuse service to customers of CLECs whose rates are at or below the benchmark.

CONCLUSION

For the foregoing reasons, the Commission should (1) eliminate or modify its "new market" rule, (2) clarify that the benchmark rate may be calculated using an average of the competing ILEC rates, (3) reconsider its restriction on which carriers may take advantage of the rural exemption, and (4) reject Qwest's requests to further restrict CLEC access rate levels where the IXC also receives services from the ILECs and to expand the IXCs' abilities to block traffic where they do not receive adequate billing information from CLECs.

Respectfully Submitted,

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